

GENERAL COUNSEL'S REPORT

February 27, 2013

B. Surgery Center of Lebanon, Lebanon (Wilson County), TN — CN0906-036

Request for a six month extension of the expiration date from March 14, 2013 to October 14, 2013. This project was approved on April 28, 2010, by a vote of 9-0, for the establishment of an ambulatory surgical treatment center (ASTC) with three (3) operating rooms, and one (1) procedure room with an estimated project cost of \$4,376,825.00. University Medical Center appealed the approval of the CON, and voluntarily dismissed its appeal after nine (9) months; which extended the expiration date of the CON.

BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

WILLIAM WEST
Direct Dial: (615) 726-5561
Direct Fax: (615) 744-5561
E-Mail Address: bwest@bakerdonelson.com

2013 JAN 31 AM 9:54

BAKER DONELSON CENTER, SUITE 800
211 COMMERCE STREET
NASHVILLE, TENNESSEE 37201

MAILING ADDRESS:
POST OFFICE BOX 190613
NASHVILLE, TENNESSEE 37219

PHONE: 615.726.5600
FAX: 615.726.0464

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January 31, 2013

Ms. Melanie Hill
Executive Director
Tennessee Health Services and Development Agency
161 Rosa L. Parks Boulevard
Frost Building
Nashville, TN 37243

Via Hand Delivery

Re: Request for Extension of Expiration Deadline for CON No. CN0906-036,
Surgery Center of Lebanon

Dear Ms. Hill:

As you know, this firm represents Lebanon Healthcare Partners, LLC, the owners of the CON project named the "Surgery Center of Lebanon", which bears CON number CN0906-036.

As you may recall, this certificate of need was the subject of an appeal that was later dismissed. As a consequence, the expiration date for this certificate of need is set for March 14, 2013.

In addition to the problems and delays caused for this project by the appeal, which was ultimately dismissed, this project also ran into the difficulties caused by the recent severe recession. As a consequence, the CON holder is unable to develop the project at the original site which is set forth in the certificate of need application.

As a consequence, Lebanon Healthcare Partners, LLC intends to file a CON application as soon as possible for the relocation of this project to another site within Lebanon, Wilson County, Tennessee.

In order to protect the rights of the applicant in this matter, under a certificate of need that has previously been granted and which needs an extension of its expiration deadline through no fault of the applicant, the applicant respectfully requests a six-month extension on certificate of need number CN0906-036, up to and including September 14, 2013. By or before that time, the applicant will have filed and obtained HSDA action on its relocation CON application. Thus, we request that this request for an extension of the expiration deadline for CN0906-036 be taken up at the HSDA's February 27, 2013 meeting. Representatives of Lebanon Healthcare Partners, LLC will be present at that meeting to respond to any concerns HSDA members may have about this request.

Ms. Melanie Hill
January 31, 2013
Page 2

The requested extension filing fee is enclosed with this letter. If you have any questions, please do not hesitate to contact me.

Sincerely,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC



William West
Counsel for Lebanon Healthcare Partners, LLC

WHW/mhh
Enclosure

cc: Keith Bolton

STATE OF TENNESSEE
Health Services and Development Agency



Certificate of Need No. **CN0906-036A** is hereby granted under the provisions of T.C.A. § 68-11-1601, *et seq.*, and rules and regulations issued thereunder by this Agency.

To: Lebanon Healthcare Partners, LLC
102 Hartman Drive, Suite G
Lebanon, TN 37087

For: Surgery Center of Lebanon

This Certificate is issued for: The establishment of an ambulatory surgical treatment center (ASTC) with three (3) operating rooms, and one (1) procedure room.

On the premises located at: 101 Physicians Way
Lebanon (Wilson County), TN 37087

For an estimated project cost of: \$4,376,825.00

The Expiration Date for this Certificate of Need is

June 1, 2012

or upon completion of the action for which the Certificate of Need was granted, whichever occurs first. After the expiration date, this Certificate of Need is null and void.

Date Approved: April 28, 2010


Chairman

Date Issued: May 26, 2010


Executive Director

CN0906-036 - Request for Extension

Jim Christoffersen

Sent: Tuesday, February 12, 2013 9:55 AM

To: West, Bill [bwest@bakerdonelson.com]

Cc: Melanie Hill

Bill,

In your letter, dated 1/31/13, requesting an extension of CN0906-036, you stated that "this project ran into difficulties caused by the recent severe recession. . . [a]s a consequence, the CON holder is unable to develop the project on the original site. . ."

Since the project was approved on 4/28/10 - well after the severe recession hit - please detail the unforeseen difficulties caused by the recession of which Lebanon Healthcare Partners, LLC was aware when it applied for the CON. Also, please explain and provide supporting documentation for why these difficulties would no longer prevent the project from being completed.

Jim Christoffersen

General Counsel

Tennessee Health Services and Development Agency

161 Rosa L. Parks Blvd., 3rd Fl.

Nashville, TN 37203

(615) 741-2364

BAKER DONELSON
BEARMAN, CALDWELL & BERKOWITZ, PC

February 13, 2013

BAKER DONELSON CENTER, SUITE 800
211 COMMERCE STREET
NASHVILLE, TENNESSEE 37201

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James Christoffersen, Esq.
General Counsel
Tennessee Health Services & Development Agency
161 Rosa L. Parks Boulevard
The Frost Building
Nashville, Tennessee 37243

Via Email and Hand Delivery

Re: CN0906-036 - Request for Extension

Dear Jim:

When I received your email yesterday, February 12, 2013, requesting additional information to justify the extension for the above-captioned certificate of need, I immediately forwarded it to Keith Bolton, the contact person for CN0906-036.

He has provided the following information to me for forwarding on to you to explain why the originally approved project could not be developed at the original site on Physicians Way near the intersection of South Hartman Drive and I-40. According to Mr. Bolton, the property to be utilized for the building which was to house the surgery center near South Hartman Drive and I-40 was originally purchased, after appraisal, by the developers in 2007. It was acquired by the developing entity for approximately \$1.7 million, which was financed by a local bank. Due to the delays in the development for the reasons set forth below, and the general economic slump from the recession, the property has gone into foreclosure. The property is now listed for sale at \$1 million, and there are no takers for this property at that price. The bank holding the note believes that the property would now be appraised as holding a value of between \$500,000 and \$600,000. This makes the financing for the property for the developing entity no longer feasible, according to Mr. Bolton.

Secondly, the developing entity which initially acquired the property apparently significantly underestimated the site development costs. The projected site development costs on the 1.6 acre parcel, as finally projected, were over \$1 million.

The final issue that made the development of the property near South Hartman Drive and I-40 by the original developers difficult, and also contributed to the prevention of the completion of this project, was that the property was under significant real estate limitations imposed by the local homeowners association ("HOA"). The HOA restricted the types of tenants that could go into the proposed building, which was to house the original surgery center approved in CN0906-036. The only two tenants that were approved to go in that building by the HOA were an

James Christoffersen, Esq.
February 13, 2013
Page 2

orthopedic group and the ambulatory surgical treatment center that was the subject of CN0906-036. However, the developers wanted to have additional tenants in the building to make it financially viable by increasing the revenue flow from rents for the structure. This further limited the capacity of the developers of the building to carry out the construction of the project, and imposed significant economic limitations upon them.

As Mr. Bolton has stated to me, between the financing difficulties caused by the changes in the value of the property near South Hartman Drive and I-40, the unforeseen higher costs of the site development work, and the HOA's restrictions on tenants in the proposed building, the developers of this project, who were to have developed the building in which the surgery center would be placed, were unable to obtain final, long-term financing to complete the project. Of course, complicating all of this, and causing additional delays, was the opposition to, and the appeal against, the grant of the CON. The appeal was dismissed early in 2011.

Mr. Bolton has indicated that the applicant in CN0906-036 has learned from these experiences. The costs for the new site proposed for the new CON application are under \$400,000 for the developer. The land for the new site is flat and nearly pad ready, and thus does not have significant site development costs. Also, the building proposed for the relocated CON project will be a single-use structure that houses only the ASTC. Furthermore, the proposed new site as set forth in the new CON application to be filed is not under any homeowners association restrictions and has no other restrictions that the applicant is aware of that would prevent the proper economic development of the ASTC proposed for the new site.

If you have any additional questions, please do not hesitate to contact me. I look forward to discussing this with you and the Board as necessary at the February meeting of the HSDA.

Sincerely yours,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.



William West

WHW/mhh

cc: Keith Bolton

GENERAL COUNSEL'S REPORT

February 27, 2013

A. Vanderbilt Health Services d/b/a Vanderbilt Maury Radiation Oncology LLC, Spring Hill (Maury County), TN — CN1012-053

Request for a six month extension of the expiration date from April 1, 2013 to October 1, 2013. This project was approved on March 23, 2011, by a vote of 11-0, for the relocation of the previously approved but unimplemented CON for the establishment a single specialty ASTC limited to the initiation of megavoltage radiation therapy services, including the acquisition of a linear accelerator with an estimated project cost of \$7,980,617.00. On July 25, 2012, a change of control was approved, by a vote of 10-0, by which VUMC's ownership share would change from 50% to 40% and Maury Regional Medical Center would change from 50% to 60%.



2013 JAN 10 PM 12:10

January 10, 2013

Ms. Melanie Hill
Executive Director
Tennessee Health Services and Development Agency
Frost Building, 3rd Floor
161 Rosa L. Parks Blvd
Nashville, TN 37243

Dear Ms. Hill,

This letter is in regard to Certificate of Need # CN1012-053A, awarded to Vanderbilt University Medical Center d/b/a Vanderbilt Maury Radiation Oncology, for the establishment of an ambulatory surgical treatment center in Spring Hill, Tennessee, limited to megavoltage radiation therapy services. The CON was approved on February 23rd, 2011 and issued on March 23rd, 2011. The expiration date is April 1st, 2013.

Construction of the center is well underway. As shown in the enclosed photos, a number of milestones have been reached with others anticipated in the next few months. Also, a current project timeline is attached. Nevertheless, with turnover of space from the contractors to the owner scheduled for April 18th 2013, the project will not be ready for patient occupancy until July 1st, 2013. Therefore, we are requesting a six month extension of the expiration date of the Certificate of Need. While somewhat beyond the intended opening date, the six month extension should accommodate any additional delays.

The project has experienced a number of unforeseen delays including 13 days of weather related delays, additional time for site analysis and required approvals of building permits and construction documents. The reorganization of the project ownership to include Maury Regional Medical Center, as approved by the Agency on July 25, 2012, also contributed to delays in the project.

We would like to have the request for extension of the CON expiration date presented during the February, 2013, meeting of the Agency.

Thank you for considering this request.

A handwritten signature in cursive script that reads "Ronald W. Hill".

Ronald W. Hill

Cc: Jim Christoffersen
Dan Elrod

Current Project Timeline/Projected Opening

1. Exterior of MOB is complete with landscaping installed
2. HVAC support for the Radiation Oncology area has been installed on the roof
3. All metal stud walls have been installed with sheetrock hanging in place for part of the area
4. The contractors will turn the building over to Radiation Oncology on 4/18/13
5. The linear accelerator has been ordered with a scheduled delivery date of 4/20/13
6. The CT simulator has been ordered and will be delivered in May, 2013
7. The commissioning of the accelerator will occur between 4/20/13 and 06/01/13
8. Furniture, fixtures, medical supplies and support equipment will all be in place by 06/01/13
9. We anticipate that all will be in order by 06/01/13 and the state notified by 06/01/13 requesting the site survey

1003 Reserve Blvd, Spring Hill, TN 37174

CN1012-053



This is an entrance into the main lobby of the MOB. Through this entrance and to the right is Radiation Oncology

Radiation oncology location



An illustration of the core with the nursing station on the right. This area has 80% of the HVAC support installed with electrical conduit in place.

This is the view of the vault entrance from the core area. As illustrated, the vault door has been hung, the HVAC support is visible and the mechanical door opener has been installed above the door.



This is the corridor that contains the back offices for physicians, physics, and break room. As illustrated the HVAC vents are being installed and sheetrock is being hung



This is the main lobby entrance
to the building. The arrow
points to the entrance into
Radiation Oncology



1/8/13 Main Entrance Location



STATE OF TENNESSEE
Health Services and Development Agency



Certificate of Need No. **CN1012-053AM** is hereby granted under the provisions of T.C.A. § 68-11-1601, *et seq.*, and rules and regulations issued thereunder by this Agency.

To: Vanderbilt Maury Radiation Oncology, LLC c/o Maury Regional Medical Center
1224 Trotwood Avenue
Columbia, TN 38401

For: Vanderbilt Maury Radiation Oncology LLC

This Certificate is issued for: The relocation of a previously approved but unimplemented Certificate of Need, CN0804-024A for the establishment of an ambulatory surgical treatment center (ASTC), single specialty, limited to the initiation of megavoltage radiation therapy services. The project is for construction of a new freestanding facility and purchase of major medical equipment including the acquisition of a linear accelerator with Intensity Modulated Radiation Therapy (IMRT) capabilities and a computerized tomographic (CT) simulation scanner.

Modification: Modified pursuant to Rule 0720-10-.06(8) – On July 25, 2012 the HSDA Agency granted the change of control for the owner, Vanderbilt University Medical Center through its wholly-owned limited liability company, Vanderbilt Maury Radiation Oncology, LLC to decrease ownership from 50% to 40% and Maury Regional Medical Center to increase ownership from 50% to 60%. The project was originally approved on February 23, 2011.

On the premises located at: Unaddressed intersection of Saturn Parkway
and Port Royal Road
Spring Hill (Maury County), TN 37174

For an estimated project cost of: \$7,980,617.00

The Expiration Date for this Certificate of Need is

April 1, 2013

or upon completion of the action for which the Certificate of Need was granted, whichever occurs first. After the expiration date, this Certificate of Need is null and void.

Date Approved: July 25, 2012


Chairman

Date Issued: August 22, 2012


Executive Director